

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

NORTH CAROLINA STATE)
CONFERENCE OF THE NAACP, et al.)

Plaintiffs,)

v.)

ROY ASBERRY COOPER III, in his official)
capacity as the Governor of North Carolina;)
et al.)

Defendants.)

**STATE BOARD
DEFENDANTS' RESPONSE TO
MOTION TO INTERVENE**

Defendants State Board of Elections Chair Robert B. Cordle, *in his official capacity*; State Board of Elections Secretary Stella E. Anderson, *in her official capacity*; State Board of Elections member David C. Black, *in his official capacity*; State Board of Elections member Ken Raymond, *in his official capacity*; and State Board of Elections member Jefferson Carmon III, *in his official capacity*, (“State Board Defendants”), neither consent nor object to the pending motion to intervene filed by President Pro Tempore of the North Carolina Senate Phillip Berger, and Speaker of the North Carolina House of Representatives Timothy Moore (“Proposed Intervenors”).

On January 14, 2019, the Proposed Intervenors moved to intervene in this case [DE 7]. The State Board Defendants accepted service of Summons and Plaintiffs’ Complaint on February 4, 2019. Defendant Cooper filed his Response to the Motion to Intervene on February 12, 2019 [DE 34]. On February 13, 2019, this Court issued a text Order setting the State Board Defendants’ deadline for filing any response to Motion to Intervene to

February 19, 2019. The State Board Defendants incorporate and rely upon Defendant Cooper's arguments in his response to said motion to intervene, and further state the following:

The Proposed Intervenor's motion challenges the ability of the current defendants to defend the case, as well as the ability of the Attorney General's office to serve as counsel in the defense of the case.

For the reasons discussed by Governor Cooper in his response, [DE 34 at 1-2], the State Board Defendants disagree with the Proposed Intervenor's contention that intervention is necessary, or required based on N.C. Gen. Stat. § 1-72.2, or that the State Board Defendants represented by the undersigned counsel are not capable of defending this lawsuit. (DE 8 at 11-16) State Board Defendants note that a federal court in North Carolina has previously rejected a nearly identical contention by the Legislative Intervenor that a mandatory intervention is appropriate under similar circumstances. *Ansley v. Warren*, 2016 U.S. Dist. LEXIS 88010 (W.D.N.C. July 7, 2016) (noting "that Movants may renew their motions at a later date if it becomes apparent at some point in the future that the State no longer intends to defend the constitutionality of [challenged legislation.]")

Nevertheless, State Board Defendants do not oppose Legislative Intervenor's being permitted to intervene, and defer to the Court's determinations regarding whether and in what capacity the Proposed Intervenor will be permitted to proceed as part of this action.

Respectfully submitted, this 14th day of February, 2019.

JOSHUA H. STEIN
Attorney General

/s/ Olga E. Vysotskaya de Brito
Olga E. Vysotskaya de Brito
Special Deputy Attorney General
N.C. State Bar No. 31846
N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-0185
Facsimile: (919) 716-6759
Email: ovysotskaya@ncdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing **STATE BOARD DEFENDANTS' RESPONSE TO MOTION TO INTERVENE** with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

This 14th day of February, 2019.

/s/ Olga E. Vysotskaya de Brito
Olga E. Vysotskaya de Brito
Special Deputy Attorney General